IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAYA EDELMAN, *et al.*, Plaintiffs, v. HIGHER ONE HOLDINGS, INC., WEX BANK, INC., CUSTOMERS BANK, Defendants.	: : : : : : : : : :	CIVIL ACTION NO. 2:17-cv-01700-RBS

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Defendants Customers Bank ("Customers Bank") and Higher One Holdings, Inc. ("Higher One") submit this Memorandum of Law in support of their Motion to Compel Arbitration and Stay Proceedings (the "Motion"). Pursuant to the written arbitration provisions governing Plaintiff's account with Higher One and Customers Bank, and in conformance with the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, this Court should (i) direct Plaintiff Shaya Edelman ("Plaintiff') to pursue her claims individually through arbitration, and (ii) stay her action in this Court.[1]

I. PRELIMINARY STATEMENT

This putative class action arises out of Higher One's administration and/or management of Plaintiff's student financial aid disbursements, its policies regarding Plaintiff's Higher One account, and the fees charged to Plaintiff. Specifically, Plaintiff alleges that Higher One made arrangements with her college pursuant to which her student aid money was deposited into a "OneAccount", a

[1] Under the Joint Stipulation to Briefing Schedule for Defendants' Motions to Compel Arbitration approved by the Court on July 12, 2017 [Dkt. No. 18], Defendants' obligation to answer, move, or otherwise plead in response to Plaintiff's Complaint is tolled during the pendency of this Motion.

Higher One bank account linked to a Higher One debit card ("Higher One Account"). Complaint [Dkt. No. 1], ¶¶ 1-7. Once the debit card account was established, Plaintiff alleges that Higher One, Customers Bank, and their co-defendant, WEX Bank (collectively, "Defendants") extracted unreasonable fees and charges. Id., ¶¶ 9-10.[2]

Based upon these allegations, Plaintiff asserts claims against Defendants under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, as well as common law claims of conversion and unjust enrichment. Id., ¶¶ 119-158. Plaintiff seeks restitution and disgorgement, damages, and declaratory and injunctive relief. Id., ¶¶ 31-32. In addition, Plaintiff seeks rescission of her Higher One Account agreement ("Agreement"). Id., ¶¶ 129-138. She asserts these claims on behalf of herself and two separate classes: a Pennsylvania-only class (for her Pennsylvania Unfair Trade Practices cause of action) and a putative nationwide class. Id., ¶ 30.

As discussed below, Plaintiff's claims are subject to a binding arbitration agreement. As a result, Plaintiff's claims must be brought individually, through arbitration, and pursuant to the procedures expressly stated in her Agreement. Plaintiff has been informed of Defendants' belief that her claims are subject to arbitration but she refuses to pursue the contractually-mandated arbitration. In the end, however, the arbitrability of Plaintiff's claims is not a matter of Plaintiff's preference. Accordingly, Customers Bank and Higher One respectfully request that this Court direct Plaintiff to arbitrate her claims on an individual basis and to stay all proceedings in this action.

[2] WEX Bank is expected to join this Motion through an individual filing tailored to its role in this litigation.

II. BACKGROUND

A. Plaintiff Expressly Agreed To The Terms Of Her Agreement With Defendants

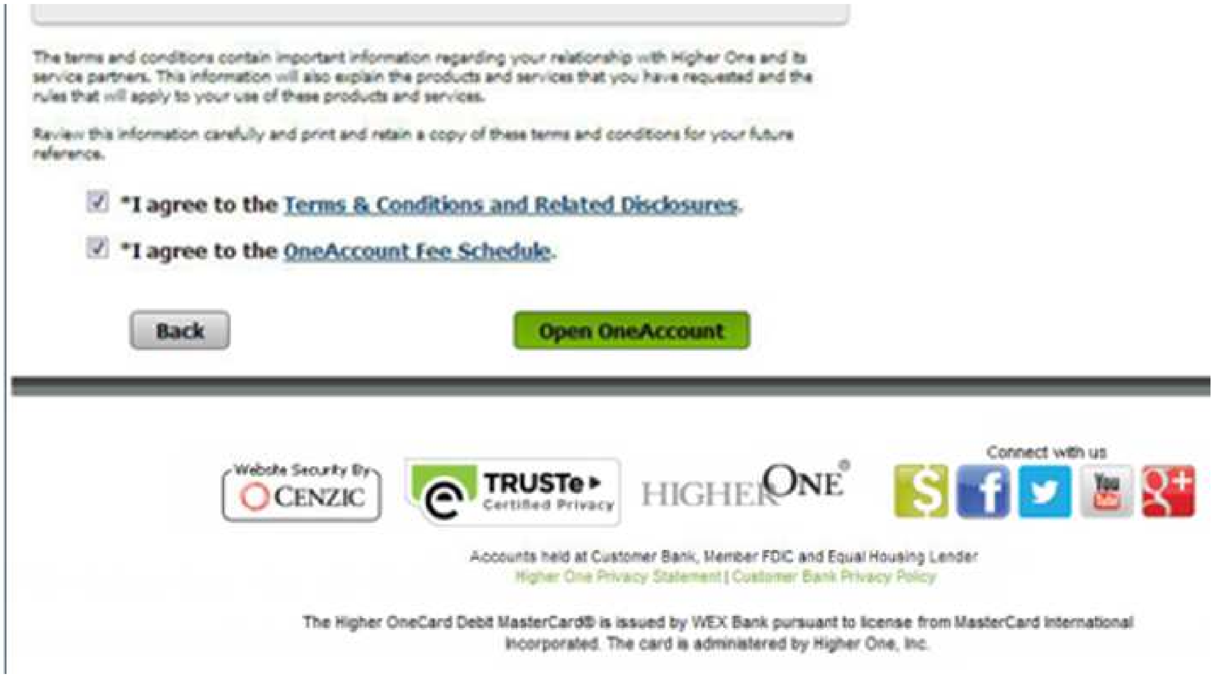
Plaintiff asserts her claims against three co-defendants, Higher One, Customers Bank, and WEX Bank. Although she alleges that "generally" her "direct contact had been with Higher One," she also alleges that Customers Bank or WEX Bank "detained Plaintiff's financial aid funds, issued debit cards, and assessed the fees [t]herein, pursuant to instructions and policies devised in cooperation with Higher One during the relevant period." Compl., ¶ 4.

In fact, the Agreement—the contract Plaintiff signed when she opened her Higher One Account—also controlled (and controls) her relationship with Customers Bank.[3] See Agreement, attached as Ex. 2 to the Declaration of Casey McGuane, at 2 ("Unless otherwise stated, 'Higher One,' 'we' or 'our' will refer collectively to Higher One, Inc. and its subsidiaries, affiliates, directors, officers, employees, agents, *service partners*, and contractors") (emphasis added); id. at 6 ("This Agreement is by and between the account holder, Customers Bank ('Bank') and Higher One, Inc. ('Higher One')."). Thus, the terms and conditions to which Plaintiff agreed when opening her Higher One Account govern her relationship with Higher One and Customers Bank.

In order to open her Higher One Account, Plaintiff was required to complete an online registration process. See McGuane Decl., ¶¶ 5-8. She completed this registration on September 14, 2014. Id., ¶¶ 5; 13. At that time, Plaintiff was provided the option of directing disbursement of her student financial aid to a third-party bank rather than opening a checking account through Higher One; doing so would have provided Plaintiff access to her funds in two-to-three days. Id., ¶ 3. She instead chose to open a checking account—and enter into an Agreement—with Higher One and

[3] Customers Bank's relationship to Plaintiff was originally contractual, as explained above. As Plaintiff alleges, Customers Bank purchased Higher One's "OneAccount" business in June, 2016. Compl. at ¶ 3.

Customers Bank. To do so, Plaintiff was required to affirm and accept the Terms and Conditions of the Agreement ("Terms and Conditions"). Id., ¶ 6-10. In particular, Plaintiff was required to open the Terms and Conditions by clicking a hyperlink; only after Plaintiff opened the Terms and Conditions for review was she able to affirmatively "agree" to them by checking a box next to the hyperlink. Id., ¶ 8. Only by clicking the box and "agreeing" to the Terms and Conditions could Plaintiff proceed with the account opening process. Id.[4] Notably, Plaintiff was informed that "[t]he terms and conditions contain important information regarding [Plaintiff's] relationship with Higher One and its service partners." Id. Moreover, Plaintiff was directed to "[r]eview the information carefully and print out and retain a copy of the terms and conditions …." Id.


*I agree to the Terms & Conditions and Related Disclosures.
*I agree to the OneAccount Fee Schedule.
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HIGHER ONE
Connect with us

[4] Notably, Plaintiff was also required to view, and accept, the Fee Schedule that applied to her Higher One Account. As with the Terms and Conditions, the registration process required Plaintiff to open a clearly identified hyperlink, view the Fee Schedule, and then affirmatively accept (by first checking a box and then clicking on a button) those fees. Plaintiff could not complete her registration or open her account without affirmatively viewing and accepting the Fee Schedule. McGuane Decl. at 14.

The Terms and Conditions to which Plaintiff agreed included two separate arbitration provisions, one located within the "Higher One Web Services User Agreement" (the "Web Services Agreement") and one located within the "Account Terms and Conditions and Related Disclosures" (the "Account Terms and Conditions"). Id., ¶ 9; see also Agreement at 4; 9. The two arbitration provisions contain identical terms. Id.; Agreement at 4; 9-10.

Plaintiff's agreement to these terms is not open to any reasonable dispute. Plaintiff could not proceed and complete her registration for her Higher One Account *unless* she viewed the Agreement, including its Terms and Conditions, *and* affirmatively clicked on a button denoting her acceptance of those Terms and Conditions. McGuane Decl., ¶ 10. As a result, the fact that Plaintiff completed her Higher One Account registration is proof that she took the necessary steps to set up her account, including the affirmative acceptance of the Terms and Conditions. Id., ¶¶ 10-12. As noted above, Plaintiff viewed and accepted these Terms and Conditions on September 14, 2014. Id., ¶¶ 5, 13.[5]

1. The Web Services Agreement And Account Terms And Conditions Are Part Of A Legally Binding Contract Between Plaintiff And Defendants

The Web Services Agreement is "a legally binding agreement between [Plaintiff] and Higher One" that "constitutes 'a writing signed by [Plaintiff] under any applicable law or regulation." Agreement at 2. The Web Services Agreement stipulates that any mention of "'Higher One,' 'we' or 'our'" in fact "refers collectively to Higher One, Inc. and its . . . service partners." Id. This includes Customers Bank.

The "Account Terms and Conditions" of the parties' Agreement "govern the use of [Plaintiff's] checking account held by Customers Bank." Agreement at 6. The Account Terms and

[5] Subsequent to entering into an agreement with Higher One and Customers Bank, Plaintiff used her checking account on numerous occasions and, by doing so, likewise "agree[d] to the terms of the Agreement and the applicable Schedule of Fees." McGuane Decl. at 16.

Conditions state that, "[b]y opening the Account [Plaintiff] accept[s] and agree[s] to [the] Agreement and any future amendments as communicated to [Plaintiff] by [Defendants] from time to time in accordance with [the] Agreement." Id. The Account Terms and Conditions also state that, "[b]y using the Account [Plaintiff] agree[s] to the terms of [the] Agreement and the applicable Schedule of Fees that might be imposed." Id.

2. Plaintiff's Agreement With Defendants Contains Two Identical, And Applicable, Arbitration Provisions

The Web Services Agreement and the Account Terms and Conditions contain identical arbitration provisions. In both, under the heading "Arbitration," the provisions clearly and conspicuously state that any and all disputes that are not filed in small claims court are subject to arbitration:

> This section of this Agreement does not apply to any dispute in which the amount in controversy is within the jurisdictional limits of, and is filed in, a small claims court. ***We and you agree to arbitrate all other disputes between you and us***.

Agreement at 4 (emphasis added); id. at 9. The arbitration provisions further state that they are "intended to be broadly interpreted," and that:

> by entering into this Agreement, you and we are each waiving the right to a trial by jury or to participate in a class action. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision.

Id. at 4, 9. These provisions "shall survive termination of [the] Agreement[s]." Id. at 4, 9.

The arbitration provisions also provide that any disputes between Plaintiff and Defendants must be resolved individually, foreclosing class-based litigation and class-based arbitration. The contracting parties:

> AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITIES AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

Id. at 4 (capitalization in original); id. at 10. Thus, "[b]y entering into th[e] Agreement[s]," Plaintiff and Defendants "each waiv[ed] the right to trial by jury or to participate in a class action." Id. at 4, 10; see also id. at 4, 10 (stating Plaintiff "will not have the right to participate as a representative or member of any class of claimants pertaining to any dispute subject to arbitration.").

Finally, the arbitration provisions include a number of policies and/or provisions that render arbitration efficient, flexible, and cost-effective. For instance, the provisions stipulate that the American Arbitration Association's rules for commercial/consumer disputes will govern any dispute subject to arbitration. Id. at 4, 9-10. They include a hardship waiver intended to cover arbitration filing costs and state that Higher One and/or Customers Bank "will pay all AAA filing, administration and arbitrator fees for any arbitration initiated in accordance with the [provision's] notice requirements[.]" Id. at 4, 10. The provisions also allow for minimum damages payments and double attorneys' fees for any dispute in which a plaintiff succeeds on the merits of her/his claim in arbitration. Id. at 4, 10.

III. ARGUMENT

All of Plaintiff's claims involve her Higher One Account and various transactions related to that account. As noted above, in order to register for, and open, that account, Plaintiff was required to agree to specific Terms and Conditions, including two arbitration provisions that apply to "all disputes" not filed in small claims court between Plaintiff, Higher One, Customers Bank, and any other Higher One "service partners." See Agreement at 4, 9. Because these arbitration provisions encompass Plaintiff's claims, Customers Bank and Higher One respectfully request that this Court grant this Motion, direct Plaintiff to arbitrate her claims individually, and stay this action pending completion of arbitration.

A. Standard Of Review

Disposition of a motion to compel arbitration "calls for a two-step inquiry into (1) whether a valid agreement to arbitrate exists, and (2) whether the particular dispute falls within the scope of that agreement." Trippe Mfg. Co. v. Niles Audio Corp., 401 F.3d 529, 532 (3d Cir. 2005); see also Clerk v. First Bank of Del., 735 F. Supp. 2d 170, 176 (E.D. Pa. 2010) (same). If both requirements are met, the FAA requires that courts refer the matter to arbitration proceedings. Id.; Clerk, 735 F. Supp. 2d at 176. "In making this determination, the court 'will not consider the merits of the claims giving rise to the controversy.'" Clerk, 735 F. Supp. 2d at 176; see also Silfee v. Automatic Data Processing, Inc., No. 16-3725, 2017 WL 2544851, at *1 (3d Cir. Jun. 13, 2017) ("In deciding a motion to compel arbitration, the role of the court 'is strictly limited to determining arbitrability and enforcing agreements to arbitrate, leaving the merits of the claim and any defenses to the arbitrator.'").

"District courts need only engage in a limited review to ensure that the dispute is arbitrable—*i.e.*, that a valid agreement to arbitrate exists between the parties and that the specific dispute falls within the substantive scope of that agreement." Bazzone v. Nationwide Mut., 123 F. App'x 503, 505 (3d Cir. 2005) (internal quotation marks and citations omitted). "In conducting this limited review, the courts must apply ordinary contract principles, with a healthy regard for the strong federal policy in favor of arbitration." Id.

B. The FAA Establishes A Strong Policy Favoring Arbitration

Over the last thirty years, the Supreme Court has repeatedly reaffirmed the strong federal public policy favoring arbitration, a policy which requires that courts "rigorously enforce" arbitration agreements. Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 221 (1985).[6] In doing so, the

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[6] Any argument that the arbitration agreement's class action waiver is unenforceable has been foreclosed by the United States Supreme Court's decision in AT&T Mobility LLC v. Concepcion,

Supreme Court has explained that it is furthering Congress's intent to "reverse the longstanding judicial hostility to arbitration agreements" and ensure that arbitration provisions are placed on "the same footing as other contracts." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24 (1991); see also AT&T Mobility, 563 U.S. at 339 ("[C]ourts must place arbitration agreements on an equal footing with other contracts . . . and enforce them according to their terms." (internal citation omitted)). The "overarching purpose of the FAA, evident in the text of §§ 2, 3 and 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." AT&T Mobility, 563 U.S. at 344.

The presumption in favor of arbitrability "is particularly strong" where "the parties contractually agree to an arbitration provision broadly encompassing all disputes arising from or relating to the agreement." Comrey v. Discover Fin. Servs., Inc., 806 F. Supp. 2d 778, 785 (M.D. Pa. 2011); see also Hearon v. AstraZeneca LP, No. 02-3189, 2003 WL 21250640, at *5 (E.D. Pa. Mar. 24, 2003) (Surrick, J.) (noting that "an arbitration clause that uses 'language such as "any dispute that arises out of or relates to" the agreement, or disputes that are "in connection with" the agreement' is characterized as broad.").

Here, the contractual language regarding arbitration is even more expansive and thus the presumption even stronger—the arbitration provisions apply to "all disputes" not filed in small claims court, regardless of their subject. Neal v. Hardee's Food Sys., Inc., 918 F.2d 34, 38 (5th Cir. 1990) ("We hold that when the parties included a broad arbitration clause . . . covering 'any and all disputes,' they intended the clause to reach all aspects of the parties' relationship . . . ."); Art Galleries of Ill., Inc. v. Art World, Inc., No. 89-8940, 1990 WL 70430, at *1 (N.D. Ill. May 3, 1990)

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131 S.Ct. 1740, 563 U.S. 333 (2011), where the court held that the FAA preempts state laws that invalidate class action waivers in consumer arbitration agreements. See also Quilloin v. Tenet HealthSystem Phila., Inc., 673 F.3d 221, 231-32 (3d Cir. 2012); Litman v. Cellco P'ship, 655 F.3d 225, 231 (3d Cir. 2011).

(holding that "'any and all disputes' . . . means any and all disputes" and characterizing it as "broad language . . . not limited to disputes arising out of the . . . Agreement."). Such "broadly worded" arbitration provisions "govern disputes beyond those that involve the terms of the contract in which the arbitration clause appears," Hearon, 2003 WL 21250640, at *5, and may only be disregarded where "'express provision exclud[es] a particular grievance from arbitration.'" AT&T Tech., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 650 (1986) (citations omitted). Even then, "'only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.'" AT&T Tech., Inc., 475 U.S. at 650. "'[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'" Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985) (citations omitted).

Given the plain language of the arbitration provisions at issue in this matter, their broad scope, and Plaintiff's indisputable acceptance of their terms, the provisions should be given effect.

C. A Valid Agreement to Arbitrate Exists.

A valid agreement to arbitrate exists. As explained above, the arbitration provisions in both the Web Services Agreement and the Terms and Conditions provide that disputes (other than disputes in small claims court) must be arbitrated. Further, by entering her information online, opening the Terms and Conditions, and affirmatively accepting those Terms and Conditions, Plaintiff clearly consented to the terms of the Agreement, including the arbitration provisions. Accordingly, the arbitration agreement is valid and binding on Plaintiff. See James v. Global Tel*Link Corp., No. 13-4989, 2016 WL 589676, at *7 (D.N.J. Feb. 11, 2016) ("since Gibson was presented with all of the terms of the TOU—giving reasonable notice of the arbitration agreement—and because Gibson provided her assent to the TOU, she is required to arbitrate her claims against GTL"). In addition, as expressly stated in the Agreement's Terms and Conditions, Plaintiff's use of her Higher One Account also constituted an affirmative acceptance of the contract's terms and, by extension, its arbitration provisions. See Agreement at 7 ("By using the Account you accept and agree to the terms of this Agreement[.]").

The fact that the Agreement was completed online is not grounds for disputing its legal effect—as numerous courts in the Third Circuit (and elsewhere) have held, online contracts (and arbitration agreements) are valid and enforceable. See, e.g., Khan v. Dell Inc., 669 F.3d 350 (3d Cir. 2012) (applying FAA to an online arbitration provision); see also Kelly v. Credit Acceptance, No. 16-223, 2017 WL 1051124 (N.D. Miss., Mar. 20, 2017) (applying FAA to online contract and noting that "the Electronic Signatures in Global and National Commerce Act established a general rule of validity for electronic signatures in transactions in or affecting interstate commerce"); Carr v. Credit One Bank, No. 15–6663, 2015 WL 9077314 (S.D.N.Y. Dec. 16, 2015) (online agreement subject to FAA). As one Third Circuit district court recently explained, online agreements like that at issue here—which required Plaintiff to open the Terms and Conditions and affirmatively "accept" or "agree to" them—are referred to as "clickwrap agreements" and "[n]umerous courts . . . have enforced such agreements." Global Tel*Link Corp., 2016 WL 589676, at *7 (applying FAA to "clickwrap" agreement); Defillipis v. Dell Fin. Servs., No. 14-00115, 2016 WL 394003, *5-6 (M.D. Pa. Jan. 29, 2016) (upholding "clickwrap" contract and arbitration provision); Alfeche v. Cash Am. Int'l, Inc., No. 09-0953, 2011 WL 3565078 (E.D. Pa. Aug. 12, 2011) (upholding "clickwrap" contract and arbitration provision); see also Davis v. Dell, Inc., No. 07-CV-630, 2007 WL 4623030, *4-5 (D.N.J. Dec. 28, 2007) aff'd, No. 07-630 (RBK), 2008 WL 3843837 (D.N.J. Aug. 15, 2008); Feldman v. Google, Inc., 513 F. Supp. 2d 229, 237 (E.D. Pa. 2007); TradeComet.com LLC v. Google, Inc., 693 F. Supp. 2d 370, 377–78 (S.D.N.Y. 2010).[7]

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[7] The FAA's requirement that the parties' commercial relationship "involv[e] interstate commerce" is also easily met. See, e.g., Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 273-74 (1995) (noting that "the words 'involving commerce'" are "broader than the

D. The Parties' Dispute Is Within The Scope Of The Agreement's Arbitration Provisions

In light of the strong public policy regarding arbitration, the scope of an arbitration agreement should be decided "with a healthy regard for the federal policy favoring arbitration," while "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). As noted above, the scope of the arbitration provisions at issue here is broad—they encompass "all . . . disputes" other than those in small claims court—and thus the presumption in favor of arbitrability is at its peak. Agreement at 4; 9; see also Trippe Mfg. Co., 401 F.3d at 533 (characterizing provision "encompassing '[a]ll disputes, claims, and controversies arising under this Agreement'" as "very broad"); Estate of Peltz v. Sears, Roebuck & Co., 367 F.Supp.2d 711, 717 (E.D. Pa. 2005) (If an arbitration agreement is in writing and "evidences a transaction involving commerce to settle by arbitration any controversy," the agreement is within the scope of the FAA).

Under either a broad or narrow reading of the arbitration language, however, Plaintiff's claims clearly fall within its four corners. Plaintiff bases her Complaint, in her own words, upon an allegation that Defendants engaged in "unfair and unconscionable practices of automatically creating bank accounts for college students, depositing students' financial aid funds into these newly created

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often-found words of art 'in commerce" and construing "involving" as "the functional equivalent of 'affecting.'") (internal citations omitted). As an initial matter, Plaintiff expressly agreed that the Agreement "evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision." Agreement at 4, 9. Moreover, the primary parties to this dispute are citizens of different states, transacting across state lines: Plaintiff is a Pennsylvania resident and Higher One is a Delaware corporation with its principal place of business in Connecticut. Compl., ¶¶ 25-26. Further, the business practices Plaintiff has challenged are likewise indisputably interstate: Plaintiff alleges in her Complaint that Defendants "made arrangements with hundreds of colleges and universities around the country," and she seeks to assert her claims on behalf of a nationwide class. Id., ¶ 5; see also id., ¶¶ 29-30. Although Plaintiff's class allegations are contractually foreclosed by the Agreement's arbitration provision, they nonetheless highlight the interstate nature of her claims.

Higher One accounts, deceptively, and at times coercively, preventing students from opting-out of such accounts, and assessing deceptive and unusual bank fees on student accounts." Compl., ¶ 1. Thus, Plaintiff's suit, and the claims asserted therein, unquestionably constitute a "dispute" between Plaintiff, Higher One, Customers Bank, and/or other Higher One "service providers."

The facial applicability of the arbitration provisions to Plaintiff's claim, in combination with the federal presumption in favor of arbitrability, make clear that Plaintiff's claims belong before an arbitrator, not before this Court. See AT&T Techs., Inc., 475 U.S. at 650 (finding that because "only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail," courts must presume that disputes are arbitrable "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." (internal quotation marks and citations omitted)); Moses H. Cone, 460 U.S. at 24-25; Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 406 (1967); Bazzone, 123 Fed. Appx. at 505. Accordingly, the Court should compel Plaintiff to pursue her claims, if at all, through arbitration.

E. This Litigation Should Be Stayed Pending Arbitration

The Court should also stay this litigation pending completion of the arbitration proceedings. Such a stay would allow for the resolution of Plaintiff's claims before any further proceedings in this Court, to the extent any such further proceedings are necessary. See 9 U.S.C. §§ 3, 4; see also Moses H. Cone, 460 U.S. at 22 ("[The FAA] provides two parallel devices for enforcing an arbitration agreement: a stay of litigation in any case raising a dispute referable to arbitration, 9 B.SC. § 3, and an affirmative order to engage in arbitration, § 4.").

In fact, federal law *mandates* that Plaintiff's action here be paused while she arbitrates here claims. See Lloyd v. Hovensa, LLC, 369 F.3d 263, 270 (3d Cir. 2004) ("§ 3 of the FAA, as we have noted, mandates that a stay be entered by the District Court"). Pursuant to Section 3 of the FAA, where a lawsuit is "referable to arbitration," courts must, "on application of one of the parties[,] stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3.

There are no facts that set this case outside of the binding precedent established by the Supreme Court and the courts of the Third Circuit. This Court should follow in stride, compelling arbitration on an individual basis and staying this action pending its resolution.

IV. CONCLUSION

For the foregoing reasons, Defendants Customers Bank and Higher One respectfully request that this Court stay this action in its entirety and direct Plaintiff to pursue her individual claims in arbitration pursuant to the arbitration agreement.

Respectfully Submitted,

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